

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|-----------------|
| CRISP/CANNON DEVELOPMENT CO., INC., |) | |
| A KENTUCKY CORPORATION |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| v. |) | CASE NO. 95-480 |
| |) | |
| |) | |
| OWEN ELECTRIC COOPERATIVE, INC. |) | |
| |) | |
| DEFENDANT |) | |

O R D E R

On October 27, 1995, Crisp/Cannon Development Co., Inc. ("Crisp/Cannon"), filed a formal complaint with the Commission against Owen Electric Cooperative, Inc. ("Owen Electric") alleging that the utility has refused to install underground electric service from the rear property lines in a new residential subdivision known as Derby Estates on Long Lick Pike, Scott County, Kentucky. Crisp/Cannon further alleges that Owen Electric's offer to install underground electric service from the front property lines is discriminatory because Owen Electric has installed underground service from rear property lines in an adjacent residential subdivision known as the Colony. A copy of the complaint is attached hereto as Appendix A.

Based on a review of the complaint, the Commission finds that the first issue to be resolved is whether under KRS 278.260(1) the Commission's authority to resolve complaints of discrimination

encompasses the location of electric distribution lines along the front rather than rear property lines. Recognizing the definition of "service" set forth in KRS 278.010(11), and the judicial interpretation of that term in Benzinger v. Union Light Heat and Power Co., Ky., 120 S.W.2d 38 (1943), legal briefs should be submitted on this issue.

IT IS THEREFORE ORDERED that Crisp/Cannon and Owen Electric shall have 20 days from the date of this Order to file a legal brief addressing the Commission's jurisdiction to adjudicate the complaint filed by Crisp/Cannon.

Done at Frankfort, Kentucky, this 4th day of January, 1996.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 95-480 DATED JANUARY 4, 1996.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 13 1995

IN RE: THE MATTER OF

Case No. 95-480

PUBLIC SERVICE
COMMISSION

CRISP/CANNON DEVELOPMENT CO., INC.
a Kentucky corporation
101 Boston Square
Georgetown, Kentucky 40324

COMPLAINANT

VS.

OWEN ELECTRIC COOPERATIVE, INC.
510 South Main Street
P.O. Box 400
Owenton, Kentucky 40359

DEFENDANT

COMPLAINT

* * * * *

Comes now, Crisp/Cannon Development Co., Inc. of 101 Boston Square, Georgetown, Kentucky 40324, by and through counsel, and for its Complaint against Owen Electric Cooperative, Inc., states as follows:

1. Complainant, Crisp/Cannon Development Co., Inc. [hereinafter Crisp/Cannon], is the owner of a tract of real estate located off of Long Lick Pike in Scott County, Kentucky. A legal description of which is attached hereto as Exhibit A and a copy of a plat of same is attached hereto as Exhibit B.

2. Crisp/Cannon is developing the above-referenced real property for resale as single family residential tracts.

3. Crisp/Cannon has applied for and received preliminary development/subdivision plan approval for the proposed

residential subdivision to be known as Derby Estates, from the Georgetown/Scott County Joint Planning Commission (Planning Commission).

4. As a part of its development/subdivision plan process, Crisp/Cannon must demonstrate to the Planning Commission that the subject property can be served by necessary public utilities to support the proposed development.

5. Crisp/Cannon after becoming aware that Owen Electric Cooperative, Inc. (OEC) is designated as the public utility to provide electric service to the subject property, made application/inquiry with OEC about providing electric service to Crisp/Cannon's proposed project.

6. For reasons that will hereinafter be more specifically set out, Crisp/Cannon requested that OEC provide underground electric service on the rear property lines of the proposed residential tracts. Crisp/Cannon plans to reserve a public utility easement along the rear property lines of the proposed subdivision lots to accommodate the installation of underground electric service to the proposed residential tracts from the rear property lines.

7. The Defendant, OEC, while willing and able to provide electric service to Crisp/Cannon for its proposed development, was unwilling and refused to provide underground electric service on the rear property lines of the proposed development.

8. The Defendant, OEC, has agreed to provide underground electric service from the rear property lines on a residential

subdivision development adjacent to the proposed development of Crisp/Cannon. This adjacent residential subdivision development is known as Phase V of the Colony Subdivision, which is presently owned by Bluegrass Development Co., Inc. A copy of the proposed development plan for Phase V of the Colony Subdivision is attached hereto as Exhibit C.

9. Crisp/Cannon complains that the actions of Defendant OEC results in a discriminatory practice with no rational basis that gives an adjacent direct competitor of Crisp/Cannon an economic and competitive advantage by providing rear yard electric service to one developer and denying the same request to an adjacent developer.

10. The Georgetown-Scott County Planning Commission strongly recommends and supports rear underground electric service for residential developments in Georgetown-Scott County. Virtually all residential developments in Georgetown, Kentucky, in the last ten (10) years have followed this policy, making rear underground electric service a desired feature for new residential developments in Georgetown-Scott County. (See letter of Stephen D. Austin, Planning Director for the Georgetown-Scott County Planning Commission attached as Exhibit D.)

11. The City Council of Georgetown, Kentucky, voted September 7, 1995 to strongly encourage new residential developments in Georgetown, Kentucky, to utilize rear yard

electric service in an effort to encourage safer, more aesthetic developments in Georgetown, Kentucky. (See a copy of a letter of Mayor Warren Powers of the City of Georgetown dated September 8, 1995, which is attached as Exhibit E.)

13. Kentucky Utilities Company has indicated a willingness to serve the Crisp/Cannon project with rear yard, underground electric service, but can not presently do so due to present service provider boundaries.

14. The Kentucky Utilities Company/OEC service provider boundary line is in the immediate vicinity of the property which is the subject of this Complaint.

WHEREFORE, Complainant, Crisp/Cannon Development Co., Inc., prays for relief as follows:

1. That the Public Service Commission require Defendant, Owen Electric Cooperative, Inc. to install underground rear yard service on Plaintiff's residential development referenced above.

2. In the alternative, if Owen Electric Cooperative, INC. refuses or does not agree to install rear underground electric service for Plaintiff's development, that the Public Service Commission adjust the service provider boundaries to turn the affected areas over to Kentucky Utilities which is ready, willing and able to serve the Plaintiff's development in a safe and effective manner as supported by the City of Georgetown and the Georgetown-Scott County Planning Commission.

Respectfully submitted,

CANTRILL AND SIMMS

By: 

HAROLD F. SIMMS
121 South Hamilton Street
Georgetown, Kentucky 40324
(502) 863-6290
ATTORNEY FOR CRISP/CANNON
DEVELOPMENT CO., INC.

VERIFICATION

The undersigned, Taylor Cannon, as Vice-President for and on behalf of Crisp/Cannon Development Co., Inc., states that the facts set forth herein are true and correct to the best of his knowledge and belief.

CRISP/CANNON DEVELOPMENT CO., INC.

BY: 

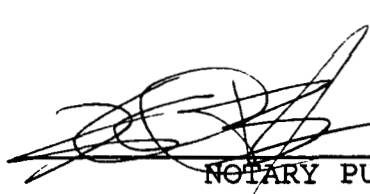
TAYLOR CANNON

TITLE: Secretary/Treasurer

COMMONWEALTH OF KENTUCKY

County of Scott

Subscribed, sworn and acknowledged before me, a Notary Public, by Taylor Cannon as Secretary/Treasurer of Crisp/Cannon Development Co., Inc., a Kentucky corporation, this 12th day of October, 1995.


NOTARY PUBLIC

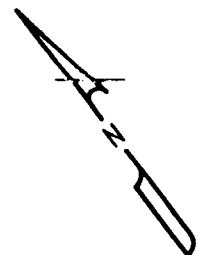
My Commission Expires: 5-12-98

All that tract or parcel of land situated on the west side of Kentucky State Route 32 (also known as Long Lick Pike) approximately 1 mile from the intersection of US 25 and State Route 32 and located in Scott County, Kentucky, and being more particularly described and bounded as follows, to-wit:

Beginning at an iron pin in the westerly right-of-way line of KY State Route 32, said iron pin being a common corner to Crisp/Cannon Development Co., Inc. and Cornerstone Christian Church, Inc.; thence with the line of Cornerstone Christian Church, Inc. for three (3) calls, S 37-33-33 W 729.86' to an iron pin, N 54-44-08 W 52.45' to an iron pin, S 35-15-52 W 390.00' to an iron pin, said iron pin being a common corner to Crisp/Cannon Development Co., Inc., Cornerstone Christian Church, Inc. and Charles T. and Bobbie Jean Bevins; thence with the line of Bevins for seven (7) calls, N 54-44-32 W 107.25' to an iron pin, S 35-12-54 W 493.58' to an iron pin, S 43-51-44 W 362.17' to an iron pin, S 43-59-06 W 21.35' to an iron pin, S 68-04-56 W 42.60' to an iron pin, S 32-18-19 W 228.09' to an iron pin, S 28-48-39 W 126.00' to an iron pin, said point being near to the common corner to Crisp/Cannon Development Co., Inc., Charles T. & Bobbie Jean Bevins, and (R. Kendall and Nancy B. Brown, H. Milton and Janet W. Patton, Robert L. and Susan E. Whitney); thence with (Brown, Patton and Whitney) for eight (8) calls S 31-18-25 W 256.25' to an iron pin, S 32-52-55 W 165.61' to an iron pin, S 16-40-09 W 28.26' to an iron pin, S 31-31-23 W 60.20' to an iron pin, S 29-18-19 W 178.04' to an iron pin, S 84-07-36 W 31.83' to an iron pin, S 05-19-01 E 84.90' to an iron pin, N 78-43-05 W 22.64' to an iron pin, said iron pin being near the common corner of Crisp/Cannon Development Co., Inc., (Brown, Patton and Whitney), and Howard O. Wiles; thence with Wiles for two (2) calls, N 41-43-24 W 551.21' to an iron pin, N 41-59-24 W 72.37' to an iron pin, said iron pin being a common corner to Crisp/Cannon Development Co., Inc., Howard O. Wiles, and (Wade W. & Norma J. Glass, Alfred B. Glass); thence with Glass for thirty-two (32) calls, N 87-58-46 E 39.14' to an iron pin, S 41-59-24 E 12.50' to an iron pin, N 10-52-16 E 132.13' to an iron pin, S 64-16-34 E 17.83' to an iron pin, S 82-16-51 E 181.03' to an iron pin, S 55-13-27 E 28.77' to an iron pin, N 26-09-15 E 119.94' to an iron pin, N 59-00-57 W 23.96' to an iron pin, N 30-20-54 E 36.00' to an iron pin, N 32-58-10 E 406.69' to an iron pin, N 25-50-08 E 520.06' to an iron pin, S 65-01-00 E 71.56' to an iron pin, N 25-52-19 E 132.80' to an iron pin, N

N 16-43-00 E 30.00' to an iron pin, S 73-17-00 E 5.65' to an iron pin, N 16-43-00 E 120.00' to an iron pin, S 73-17-00 E 8.92' to an iron pin, N 06-59-39 E 155.10' to an iron pin, N 76-46-51 W 43.37' along the chord of an arc with a radius of 200.00' and an arc length of 43.46' to an iron pin, N 19-26-40 E 154.62' to an iron pin, S 84-42-20 E 119.69' to an iron pin, S 05-17-40 W 18.28' to an iron pin, S 84-42-20 E 120.00' to an iron pin, N 05-17-40 E 79.64' to an iron pin, N 61-47-35 E 101.80' to an iron pin, N 43-38-23 E 94.76' to an iron pin, N 36-40-21 E 38.01' to an iron pin, N 45-20-16 E 371.54' to an iron pin, N 40-22-32 E 154.31' to an iron pin, N 31-08-41 E 31.80' to an iron pin, S 58-51-19 E 50.06' to an iron pin, N 31-08-41 E 230.80' to an iron pin, said iron pin being a common corner to Crisp/Cannon Development Co., Inc., Glass and the right-of-way of Kentucky Route 32 (Long Lick Pike), thence with the right-of-way of Kentucky Route 32 for three calls (3) to the point of beginning, S 57-11-55 E 169.20' to an iron pin, S 50-19-02 E 138.27' to an iron pin, S 49-02-13 E 226.04' to an iron pin being the point of beginning, containing 36.89 acres and being subject to all easements both public and private.

Being the same property conveyed to CRISP/CANNON DEVELOPMENT COMPANY, INC. by deed dated March 17, 1995 and recorded in Deed Book 210, Page 380, in the Office of the Scott County Clerk.



KY 32
 LONG LICK ROAD

— TO GEORGETOWN

**CORNERSTONE
CHRISTIAN CHURCH**

PHASE 3-

PHASE 2.

PHASE 1

FUTURE

SCALE IN FEET

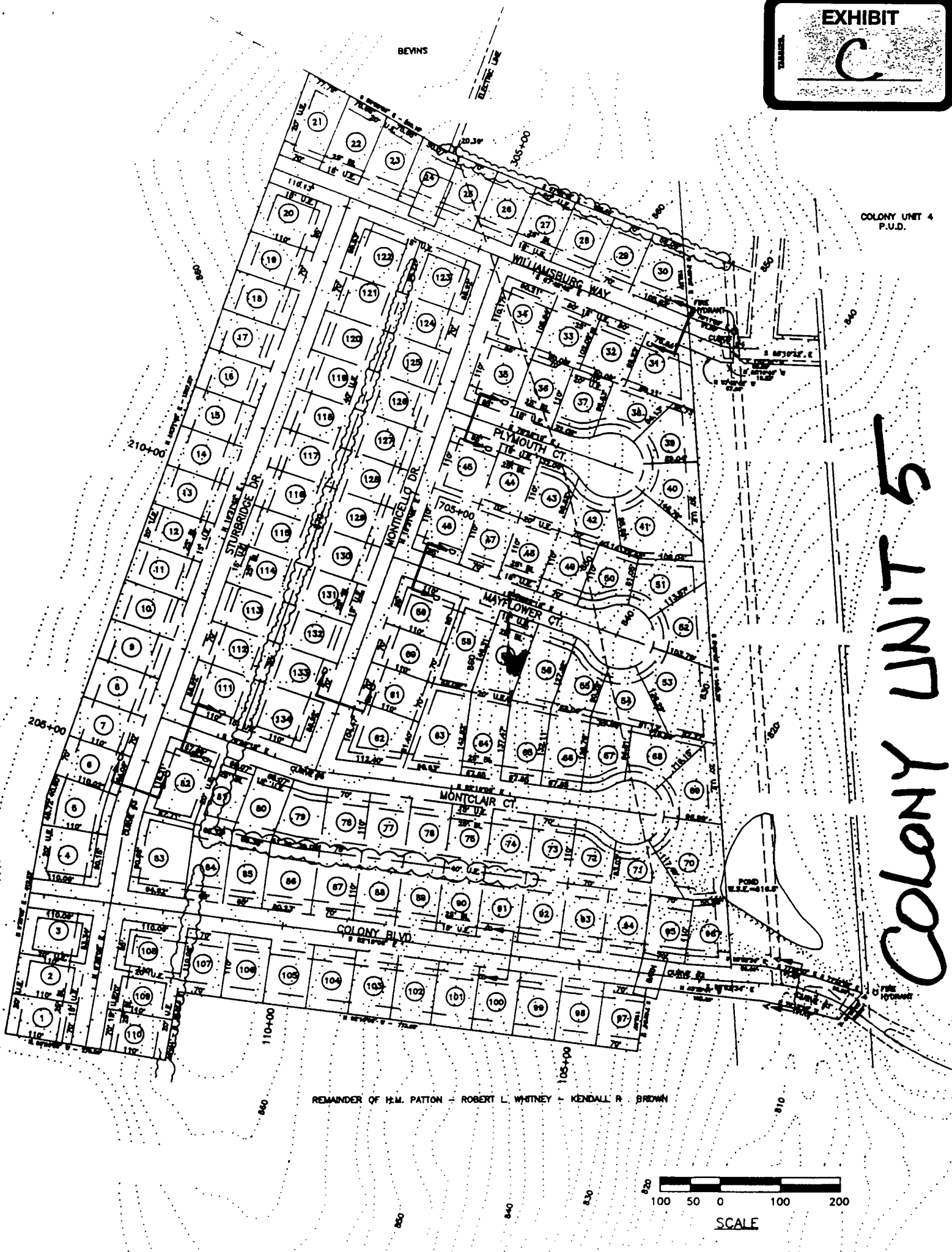


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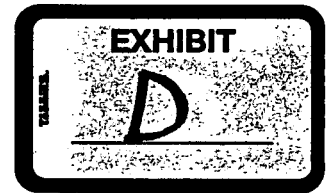
EXHIBIT

C

COLONY UNIT 4
P.U.D.



Georgetown - Scott County Planning Commission
101 E. Main Street
Georgetown, Kentucky 40324
(502) 867-3701
(502) 863-7852 Fax



STEPHEN D. AUSTIN
PLANNING DIRECTOR

September 6, 1995

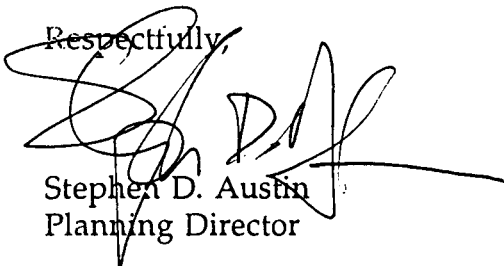
RE: DERBY ESTATES

To Whom It May Concern:

Please accept this letter in regard to the electric utility service to the above subdivision in Georgetown. Mr. Harold Simms, as counsel to the developers of the subdivision, has requested that I clarify for the record the Georgetown-Scott County Planning Commission's position on electric utility service. Specifically, there is no planning requirements or common sense reason that one development, The Colonial Gardens in The Colony, be provided underground rear yard service by Owen County RECC and yet another adjacent development, Derby Estates, be denied underground rear yard service by Owen County RECC. It has been the policy of the Planning Commission to facilitate in every way possible underground rear yard electric service and our developments over the past five years bear this out. The community has responded by making Georgetown a high real estate value city. Thus, the Planning Commission will continue to strongly suggest that all new developments follow this trend.

Please feel free to contact me.

Respectfully,



Stephen D. Austin
Planning Director

SDA/mo

cc: Harold Simms

CITY OF GEORGETOWN

COUNCIL MEMBERS

JOHN FITCH
DON HAWKINS
CECIL LEWIS
DAVID LUSBY

WARREN POWERS
MAYOR

COUNCIL MEMBERS

TERRY MAURER
SAM POLLOCK
STEVE ROBERTS
BARBARA TILFORD

September 8, 1995

Mr. George E. Overbey, Jr.
Chairman
Public Services Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 50602

Dear Mr. Overbey:

The City of Georgetown, Kentucky has been put under enormous pressure for growth since the coming of Toyota Motor Manufacturing. Georgetown has resisted the pressure for haphazard uncontrolled growth. We instead have opted to carefully develop our plan for the future of Georgetown. This plan includes proper placement of all zoning classifications of development (comprehensive plan) and guidelines for attractive, as well as safe neighborhoods (subdivision regulations) for all present and future residents of Georgetown.

We have been made aware that property recently annexed into our city lies in Owen Electric Co-Op's territory. We further understand that they have a company policy that will not allow transformers to be placed in backyards.

Our feeling is that this policy is in direct conflict with our vision for Georgetown because:

- 1) Residential streets lined with transformers on both sides in the front yard would be far from the attractive neighborhoods we envision.
- 2) Electric service alongside residential streets will create a safety hazard for our citizens three-fold:
 - a) During construction of houses, electric primary lines will be in too close proximity to both gas and water lines. The opportunity for contractors installing services to simultaneously damage electric and gas or electric and water is too great. This event could set up a catastrophe for northern Georgetown.

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Mr. George E. Overbey, Jr.
September 8, 1995
Page Two

- b) Simply having transformers within a few feet of busy residential streets is bad planning at its worst. The possibility of a traffic accident involving a transformer would be ever present. The ramifications here include: leaking gas from one or more wrecked vehicles with electric sparks present, electrocution or a helpful bystander trying to help someone in an electrified wrecked vehicle.
- c) Transformers could block visibility for residents backing out of their drive-ways into oncoming traffic.

Given all these circumstances, Georgetown City Council feels that Owen Electric's policy is in conflict with our City's best interest. We further feel this policy to be unreasonable since Kentucky Utilities has granted developers in the Georgetown area underground, backyard service (at developers' expense) for a number of years, and we have since become aware of the fact that Owen Electric has provided rear yard service to a developer in the immediate area. Harrison RECC, who also provides service to areas of Georgetown, has offered rear yard service to area developers.

Georgetown City Council, by vote September 7, 1995, requests the Public Services Commission take the following actions whenever they are asked to act on rear yard service within Georgetown's urban service boundary.

- 1) Require Owen Electric Co-Op to install underground rear yard service at their normal rate per foot.
- 2) If Owen Electric still refuses, turn the affected areas over to Kentucky Utilities who will serve us in a safe and attractive manner.

Many thanks for your consideration and cooperation in this matter.

Best regards,



Warren Powers
Mayor

WP/tk

J. R. "Bob" Lykins, Division Vice President



Kentucky
Utilities
Company

September 12, 1995

Mr. Taylor Cannon
601 E. Main Street
Georgetown, KY 40324

Dear Mr. Cannon:

We have reviewed service territory maps on file with the Kentucky Public Service Commission in the area of your planned Derby Estates development in Georgetown, Kentucky and have determined that this property falls within the service territory assigned by statute to Owen County RECC. Kentucky Revised Statutes 278.016, 278.017, and 278.018 require the establishment of service territories for the orderly development of retail electric service and the exclusive right to serve customers within such territory. A copy of the map is provided for your reference.

Kentucky Utilities Company appreciates the interest you have expressed in our providing the electric service to your development. The statutory right does not exist to permit this to occur. KU is willing and ready to serve any development to which it has a statutory right to serve.

It is our understanding that you have expressed the intention to pursue this matter before the Public Service Commission. Should the Commission render a decision which permits our providing the electric service, KU would promptly comply with the provisions as ordered.

Once again thank you for your interest. We look forward to the opportunity to work with you in the future and if we can be of service, please let us know.

Sincerely,

Bob Lykins
Division Vice President

pc: Ms. Marge Crisp